

EXHIBIT D

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#186 P.002/018

Josephine A. Greco
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of Counsel
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of Counsel

October 24, 2011

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VIA FACSIMILE (551-4387)
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E.E.O.C. BUFO

Nelida Sanchez, Investigator
U.S. Equal Employment
Opportunity Commission
6 Fountain Plaza, Suite 350
Buffalo, New York 14202

Re: Darcy M. Black v. Black Angus Meats,
a.k.a. Boulevard Meats
E.E.O.C. Charge No.: 846-2010-55217
Our File: 5023

Dear Ms. Sanchez:

Attached is Ms. Black's Reply to Respondent's Position Statement. Please note that in order to make Ms. Black's Reply to Respondent's Position Statement easier to understand each paragraph of the Charge of Discrimination was addressed as follows:

Each paragraph of the Charge of Discrimination - Regular Type;

Response of Black Angus Meats in it's Position Statement to such paragraph - Bold Type; and

Reply of Ms. Black to such Response - *Italics Type*.

Thank you for your courtesies in this matter. If you have any questions please feel free to contact me.

Very truly yours,

GRECO TRAPP, PLLC


Josephine A. Greco

JAG/tmk
Enclosure
cc: Darcy M. Black

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Darcy Black's Reply to Respondent's Position Statement

I am a Caucasian female. I worked for Respondent since May 16, 2004. My last position was Wrapper-Packer-Cleaner.

We are a family owned meat market that has been in business since August of 1975. The company is owned by Robert Seibert, Diane Seibert, and recently added a managing partner Keegan Roberts. Presently we employ 16 employees of various ages and backgrounds. In the past 35 years we have employed Native Americans, Caucasians, African Americans, Asian and Middle Eastern. We pride ourselves as being a neighborhood market that treats our employees as if they were family. We support local organizations such as Boy Scouts, Girl Scouts, and local schools in fundraising efforts as well as Meals -On-Wheels and private individuals who are running benefits for persons who are less fortunate. We typically employ clean cut, intelligent, hard working individuals who have retail experience, or a personality conducive to friendly customer service. At present we have multiple college graduates, both male and female. Each individual brings his or her own unique experience to our business, thus varying pay rates.

The statement that "In the past 35 years we have employed Native Americans, Caucasians, African Americans, Asian and Middle Eastern" is meaningless without specific information. This is a company that employs 16 employees. It is not a "Mom and Pop" company. The personnel files of all employees during my employment will show that no "Native Americans, African Americans, Asian or Middle Eastern" employees were employed while I was employed with the company. The employees were all Caucasian employees.

I am personally aware of African American applicants who were not treated in the same manner as Caucasian applicants during my employment.

Upon information and belief, similarly situated males such as Mark Liable, Jamie Lapres, Sean Round and Patrick Howell have been paid at a higher salary rate for doing similar work.

I worked at Respondent for approximately six years. I was paid \$10.00 per hour.

Darcy Black was hired as a retail counter person and was later trained to fill orders. She began at \$7.50/hr and was part-time. She received raises of \$.50/hour yearly to put her rate at \$10.00/hr. at the time of her leaving our employ. Everyone who is hired is informed that they do not request time off the first 12 days of the month, or Saturdays, as a rule because that is the busiest day of the week. Our retail store hours are Tuesday through Saturday, being closed Sunday and Monday. In order to get their hours they typically needed to work on Saturday.

When I was hired, I was told that I was working Tuesday through Saturday. The hours of operation were 10 a.m. - 7p.m. Tuesday through Friday and 10 a.m. - 6 p.m. on Saturdays. I believed that I was working full time hours. I averaged 160 hours per month and during Deer

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Season (October through January) I worked more hours. Despite the hours that I worked, I was never offered any employee benefits. During my second year, I told another employee that I would like to take a vacation but could not afford to take a week off without pay. The employee told me that I should qualify for a paid vacation. I went to the manager, Lisa (last name unknown), and asked if I could have a paid vacation. She said that she would let me know at the end of the day and later told me that I was entitled to a week (40 hours) paid vacation. Thereafter, I received one week of vacation each year. I never received sick time or personal time during my employment. At one point, in approximately 2006, I lost my Medicaid Benefits. I asked Diane Seibert, owner, if the company offered health insurance and she told me they do not offer it because it is too expensive. Also, I did not get a raise in May 2010. I asked Keegan Roberts and he told me to take it up with Diane Seibert, owner. I asked her and she said that they could not afford it. I was told that Mark Leible and Sean Brown were given raises. I took on a part-time job cleaning at a school at night, from 6 p.m. - 9 p.m. I took this job because during the 2nd half of the month, if they wanted to cut hours at Black Angus, they would cut my hours and Debbie Nygrych's hours first. I needed money to pay for health insurance for my family. My work hours at Black Angus Meats were 7 a.m. - 3 p.m., but I usually stayed to 4:30 p.m. or 5 p.m. My second job never restricted the hours I was available to work at Black Angus. I never refused work at Black Angus because of my second job.

Mark Liable, an approximately 24 year old male, who was hired in approximately 2009 and worked as a Wrapper-Packer-Cleaner, was paid approximately \$12.50 per hour.

Mark Leible, who has culinary background experience, is employed at a higher rate than Darcy. He worked for us from 2001 to 2006 at which time he wanted to go to work for his uncle. He was a terrific employee and was told if it didn't work out we would be happy to take him back. In the fall of 2009 he asked to come back and we were thrilled. His responsibilities include filling orders, making sausage, meat cutting, and occasionally waiting on the counter. His current rate of pay is \$13.00/hr.

Soon after Mark Leible returned to employment at Black Angus, my partner in the pack room Roseanna Barnes, quit work and Mark Leible became my partner in the pack room. He smoked cigarettes and took breaks. I was able to observe when he and Jamie LaPress, during a smoke break, would go behind the dumpster and smoke marijuana. In addition, I observed that he was late almost daily. Our time cards were hand written. Tommy Howell told me that Mark Leible would sign in at the time he was scheduled, not the time he arrived at work. My responsibilities were the same as Mark Leible's except he made sausage and I made salads. In fact, they added to their menu items I created: a spiral noodle antipasto, homemade baked macaroni and cheese and old fashioned macaroni and cheese.

Jamie LaPress, an approximately 34 year old male who was employed by Respondent as a Wrapper-Packer-Cleaner during the time of my employment, was paid approximately \$13.00 per hour.

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Jamie LaPress has worked for us for approximately 11 years. His responsibilities include Sausage making, inventory rotation, cleaning of equipment and setting it up for the following day, along with cleaning of the cases and occasionally filling an order. His rate of pay is \$10.50/hr.

They told Jamie LaPress that he was not fast enough at wrapping meat. Although his start time was 7 a.m., he would come in late, sometimes as much as a half hour. Our time cards were hand written. Tommy Howell told me that Jamie LaPress would sign in at the time he was scheduled, not the time he arrived at work.

Sean Round, an approximately 34 year old male who was hired in approximately May 2005 as a Wrapper-Packer-Cleaner/Driver, was paid approximately \$12.50 per hour. Further, upon information and belief, he received a \$2.00 raise on or about June 2010, approximately one month after my termination, and is earning approximately \$14.50 per hour.

Sean Round has been employed since Feb. 2007. He has a B. S. in Health. His responsibilities include filling orders, delivery of orders in Erie, Niagara, and Orleans County. He also is in charge of flyer distribution to those areas and occasionally assists in customer service on the retail counter. His current rate of pay is \$13.00/hr. He typically works approximately 60 hours/week on our busiest weeks - whatever it takes to get the job done.

Patrick Howell, an approximately 39 years old male, worked as a Wrapper-Packer-Cleaner from approximately October to March each year during the time I was employed by Respondent. Upon information and belief, he was paid \$10.00 per hour off the books and was collecting unemployment at the same time.

Patrick Howells is not an employee of Black Angus. His father and brother have been long time employees. Pat stops in regularly to bring his dad a Ted's hot dog and see the other employees. Pat has been a personal friend of the Selberts for years as well as Keegan Roberts. Pat is in the concrete finishing business and has worked personally for the Selberts and Keegan Roberts in finishing driveways at their personal residences. Bob and Keegan Roberts have also helped Pat out with moving, roofing, and ceramic tile over the years. This is what friends do for each other.

Beginning approximately 2006, and continuing until I left employment in 2010, each year from approximately October to March, when Patrick Howells was laid off from his regular job (doing concrete work) he worked daily at Black Angus Meats in the pack room in my presence. He would bring the product from the freezers to the pack room so that we could fill the customers' orders that were to be delivered. During the concrete season, when he was not

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working at Black Angus Meats, Patrick Howells would stop in to visit and occasionally bring his Dad, Thomas Howells, a Ted's Hotdog.

Another similarly situated female, Debbie Nygrych, who has worked for the Respondent over 20 years as a Wrapper-Packer-Cleaner/and longer than all the similarly situated males, has also been paid at a lower salary than similarly situated males. She was paid approximately \$10.50 per hour.

Debbie Nygrych has been employed by Black Angus for more than 20 years. Her responsibilities include Deli Manager, training of new help, setting up the counter every morning and any customer service issues that arise. Debbie is the 'Face of the Angus' to our retail customers. Debbie has a rate of pay of \$10.50/hr. but has been grandfathered in with family health coverage which amounts to approximately \$12,000/yr. Debbie is perfectly happy with her rate of pay and health coverage.

Debbie Nygrych's husband is the recipient of Social Security Disability benefits and receives Medicare as his health coverage. She has adult children. Her daughter is married and her son is employed by Border Patrol. She was receiving single health coverage, not family. Black Angus Meats took out \$120.00 from each of her paychecks (approximately \$6,240 annually) to pay for her individual health insurance. During my employment, she complained that each year they told her she could not have a raise because her insurance went up.

The Owner's daughter, who also worked as a Wrapper-Packer-Cleaner, is the only female who has been paid at a high salary rate.

Nicole Seibert has been around the business her entire life. She has a culinary and pastry degree. She has been on our payroll for 10 plus years. Her responsibilities include development of new prepared foods, making of salads, ordering of specialty items, stocking and organizing of retail space. Customer service is also a part of her responsibilities. She also is in charge of the evening crew and supervising all evening tasks. She closes out the register, credit card and EBT terminals and therefore in charge of daily receipts. She locks up and sets the alarm Tuesday through Saturday. Her rate of pay is \$700.00/week.

From when I started work in May 2004 until approximately late 2008 or early 2009, Nicole Seibert did not work at Black Angus Meats. I was told that she worked at a different restaurant doing preparation work. When I began work in May 2004, I worked for approximately one year in the evenings on a regular basis and Nicole Seibert was not there. The manager, Kim, would be the lead employee in the evenings. When it was time to close up, either Diane Seibert, Keegan Roberts or Debbie Nygrych, would come in to close out the register, credit card and EBT terminals, lock up and set the alarm. When Kim became manager, she would sometimes work evenings and close out the register, credit card and EBT terminals, lock up and set the

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alarm. When Bob Seibert, Diane Seibert and Keegan Roberts went on vacation together, Debbie Nygrych would give everyone their checks. I was told that during this time when Nicole Seibert did not work at Black Angus Meats she received a check every week so that she could get health insurance through Black Angus Meats' policy and then signed the check over to Bob Seibert and Diane Seibert, the owners.

In approximately March 2010, I requested a salary increase, but was denied.

As far as varying pay rates that Darcy mentions, we could only assume she had unauthorized access to employee files in the office. After checking with employees, they all deny telling Darcy their pay rate. Our only conclusion is that she was looking through payroll records without permission.

I never looked at payroll records. I only looked at my paychecks that were given to me by the Black Angus Meats. I learned this information from other employees.

In addition, males have been subjected to better terms and conditions of employment. For example, males do not call in when they are going to be absent, they come in late or take several breaks to smoke, and they are not reprimanded, but females are not allowed to do that without being reprimanded. My time has been scrutinized. Keegan Roberts, an approximately 26 year old male, was the manager for approximately the last 6 years of my employment. Often when I was on my break, he and/or the owner's wife, Diane Seibert, would ask where I was. He would watch my breaks so closely that I felt compelled to punch my time card when I took my breaks. When I would be on my break, he would come find me, look at his arm and pretend that he was looking at a watch.

Males absolutely do not have preferential treatment. Every employee is entitled to one 15 minute break in the morning and one 15 minute break in the afternoon. If a lunch was taken the employee punches out for 1/2 hour. Smoking has long been an issue here for every smoker here. A smoke break is a break. Darcy's time here was scrutinized because she abused our good nature. She would receive up to 10 personal phone calls per day and then go on a smoke break. Especially when we are as busy as you can be and the phone is ringing for Darcy because her out of control kids were being sent home from school, we tended to get a bit annoyed. On one particular occasion, Darcy and Taylor Kunzelmann were outside on a break at 10 AM on a busy delivery day. Bob sent another employee out to retrieve these two employees to get back to work. Taylor returned swearing and was immediately dismissed by Bob. Darcy also returned with a negative attitude and Bob remarked to her that she was following the wrong persons lead. His only regret is not letting her go at the time. At that time, Darcy knew we were fed up, and her days here could be numbered. It was shortly after this incident that Darcy took on a part-time job cleaning at a school. This further restricted her hours she was available to work at Black Angus.

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Although I have a cell phone, I did not bring it into the workplace because it was not allowed. Jamie LaPress, Mark Leible, Sean Round, Keegan Roberts, and Taylor Kunzelmann did bring their cell phones to the workplace and used them during business hours against company policy. Their cell phones would ring wherever they were in the workplace and they would answer it. If they were at the counter, they would leave the counter, walk away and answer their phone. In addition, some of them used their cell phones for receiving and sending text messages in the workplace during working hours in violation of company policy. Since I left my cell phone in my car and did not bring it into work, the emergency number I gave my children's school was the work number. I did not receive up to 10 phone calls a day. I received less telephone calls than other employees. On occasion, I would receive a telephone call from my children's school, babysitter or my husband if it was an emergency. My babysitter and husband have my cell phone number so they would leave me messages on my cell phone knowing I would return the call during my morning break, lunch break or afternoon break. They would call my cell phone first, and if I did not answer in a reasonable time (was not on a break) they would call me at work. (Before approximately the end of 2007, we were only allowed two 15 minute breaks, and no lunch break. At a store meeting that Keegan Roberts led, Regina Rush and I complained to Keegan Roberts that under New York State law, we were entitled to a one half hour lunch break. After that, we were given a one half hour lunch break and two ten minute breaks.) Debbie Nygrych and Thomas Howells did not bring a cell phone to work, but received telephone calls at work daily. Thomas Howells would receive daily calls from his adult son, Chris Howells and Debbie Nygrych from her husband Bill. No one called me daily at work. Customers have called work and requested to speak with me and then asked me to put together his/her order because they like how I did it, or some other work related question.

Jamie Lapres is often 20 minutes to an hour and a half late for work and he is not reprimanded. Also, he would leave the work site and go behind the dumpster and smoke marijuana. Management was aware of this, but took no action against him.

As far as Jamie smoking marijuana, the management is totally unaware of any such circumstance. This is something that would not be tolerated even once. Sean's girlfriend of about eight months, on occasion did stop in at lunch time. Sean does not smoke so therefore never was on a smoke break. That was his break - no problem. Darcy's husband would call and then 10 minutes later would be here with coffee and Darcy would be outside to talk to him after several smoke breaks and several other phone calls. It was getting out of control.

Jamie LaPress, during his break, would often go behind the dumpster and smoke marijuana. Management was not only aware of it, they joked about it. For example, when Jamie LaPress made a mistake, Keegan Roberts and Thomas Howells would make comments such as, "Oh, are you stoned today?" "Did you have your daily appointment with the dumpster?" In fact when Robert Miller worked at Black Angus and went in a car with Jamie LaPress, Mark Leible and Taylor Kunzelmann to deliver flyers, Robert Miller called me from his cell phone while I was at

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work and told me that Jamie LaPress was smoking marijuana in the car and Robert Miller didn't want to be around that kind of stuff. I went in and told Diane Seibert and she said that she would talk to Keegan Roberts and Bob Seibert about it. The next day, Jamie LaPress, Mark Leible and Taylor Kunzelmann would not speak to Robert Miller or me at work.

Approximately once or twice a month, on my break, I would call my husband and ask him to bring a dozen of donuts to work so I could share them with everyone. If he came when I was no longer on my break, he would call the work phone and I would walk outside to get the dozen doughnuts. Sometimes he would also have something for me to drink also. I brought doughnuts into work hoping that I would be treated better.

Often on my break, I would go out to my van and call my husband or cousin from my cell phone crying because of the way I was treated at Black Angus Meats. During the last four years I worked, I received counseling because of my treatment at Black Angus Meats. I continue to receive counseling.

I only left work on two or three occasions over the six years I worked at Black Angus Meats. The reason was related to my children and I received permission to leave.

Sean Round is permitted to come in late on Saturdays or leave early during the time he plays in a football league which is during the Summer and Fall of each year. During the rest of the year, he only has to work the first two Saturdays of each month. Further, approximately half of the days of the week, Sean would come in anywhere from a half hour to an hour and a half late and would mark on his time card that he had arrived at the scheduled time as opposed to the time that he actually arrived at work. Also, beginning in the Summer of 2009 until the time my employment ended, when Sean's girlfriend came to the store, he would leave the building and talk to her in his or her car or outside the building. Management was aware of this, but took no action against Sean.

As far as tardy to work, Darcy was as a rule always on time. We do have a few male employees that were not as timely and have been reprimanded for such. They punched in when they got here and were paid accordingly. Sean Round did play football on a Saturday morning league and would come in to work for a few hours in the morning and then go play the game. He would return after the game and finish the day. He was paid accordingly. Sean usually worked only the first two Saturdays of the month because he typically did not wait on the counter and he usually was on over-time before Saturday. Debbie has had Saturday off on occasion or when she wants, as long as it is not the first week of the month. Nicole works every Saturday because she needs to get her hours in. She is not unhappy with the arrangement. Darcy was never denied Saturday off at the end of the month unless someone else was already off or on vacation. There was no "punching in". There was no time clock. Employees handwrote on a timecard the time they arrived at work. I was on time. Many males were not. Sean Round, a male employee,

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would write on his time card that he arrived to work at his start time, but he was actually late up to as much as 1/2 hour or more. Management was aware of it. Sean Round continued to do it and no action was taken against him.

Mark Liable, who was my partner at work in the pack room, was late approximately from 20 minutes up to an hour many days a week. Mark was also allowed to take smoke breaks throughout the day. Management was aware of this, but took no action against him.

In regard to males not having to call in if they were not going to be in, is completely false. Dan Frank was a driver for us who did not show up for work on July 3, 2006 one of the busiest days of the year. When he showed up the following day he was immediately dismissed. In November 2010 Eric Seneca (an American Indian) also did not show up for work and the following day was dismissed.

This response does not address male employees who are late to work. It addressed those who do not show up at all to work and do not call in to work. It does not respond to Mark Leible, who was my partner at work in the pack room, being late approximately from 20 minutes up to an hour many days a week and still continuing to be employed. Also, while I was employed, all the employees were Caucasian. According to this response by Black Angus Meats, after I left in May 2010, and they were aware I was complaining of discrimination, they hired a person of American Indian descent only to fire him.

Matt Marshall, an approximately 21 year old male who was hired in approximately 2008 and employed by Respondent as a Wrapper-Packer-Cleaner, was also allowed to take smoke breaks throughout the day. Management was aware of this, but took no action against him.

Brett, an approximately 21 year old male who was hired in approximately January 2010 as a Wrapper-Packer-Cleaner, would disappear during his shift and go to the bathroom, break room or out the back door and people would have to search for him. Management was aware of this, but took no action against him.

Brett Meyer does not abuse the break policy here. According to evening workers he is very good at letting them know what task he is working on and does not disappear.

I know that Brett Meyer would disappear and could not be located, because I was taken out of the pack room on at least four occasions and brought to the counter to replace him while he was located.

On several occasions she had to leave in tears because her kids could not be controlled. We did not get a full days work for what she was being paid. Phone calls were from school

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teachers, principals, babysitters; doctor's offices; social workers, and family members. Keegan would ask her to cut down on the breaks and she would keep it down for a day or two and then be back at it.

I have answered this previously herein. I took the breaks that I was entitled to under the law. Males were allowed to talk on cell phones in the work place routinely, come in late but sign in as though they were present at their start time, and in addition, take at least the number of breaks permitted by law. No action was taken against them while my breaks were scrutinized.

Males were also given preference for Saturdays off and females were not. Males were scheduled to have some Saturdays off each month, while the females were not given any Saturdays off unless they requested it in advance and even then, the females often were not allowed to take off. During my employment, I repeatedly asked to be scheduled off for even one Saturday a month and it was denied. In approximately April 2010, I requested a Saturday off four weeks in advance and was denied.

In April 2010 Bob, Diane, Nicole, were all off one particular weekend. That could have been the weekend Darcy was referring to. We do our best to accommodate all of our employees requests without jeopardizing our business. As with all the employees, the first Saturdays of the month was not a day anyone took off Darcy would change the number of hours she wanted to work from month to month depending on what benefits she was receiving. If her food stamps were cut she may want to cut down her hours to regain her benefits. On several occasions I had to provide wage verifications to social services. After she got married she made the statement it was the worst move of her life. She lost too many benefits.

There was no denial by Black Angus Meats that males were given preference for Saturdays off and scheduled to have some Saturdays off each month. Sean Round and Mark Leible were scheduled off on Saturdays at the end of the month but I was required to request it in advance and even then, often was not allowed to take off.

Also, the owner, Bob Seibert, and manager, Keegan Roberts, would come into the pack room and say hi to the male workers, but would completely ignore me.

When Bob came to work in the morning he typically did not round everyone in the building up to have a personal greeting.

Robert Seibert did Erie County deliveries (Buffalo Packs). When he would come in the Pack Room to get the Buffalo Packs loaded, he would say hi to everyone by their name, but not me. He would walk right by me and not acknowledge me.

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My co-workers and management are aware that my two children are multi-racial (Caucasian and Black). Racial comments were made by the owner and other employees about Black individuals and Black individuals were discriminated against with regard to employment opportunities.

Diane Seibert, the owner's wife, and/or Keegan Roberts, a manager, would do the hiring. When "Help Wanted" signs were placed in the door window of Respondent's facility for an open position, Black individuals who applied for the position were not given interviews. Only Caucasian individuals who applied were given interviews. If Diane Seibert or Keegan Roberts were not at work, when they returned we would have to tell them whether the applicant was Black or White and whether he/she was presentable. No Black individuals were interviewed, hired or employed by Respondent during the time of my employment with Respondent, although approximately 50 Black individuals had submitted applications for employment. One Black individual applied almost every time there was a "Help Wanted" sign in Respondent's window and he never got an interview.

As far as hiring African Americans Darcy is a bit misinformed. In our 35 years of doing business we have employed several great African American employees. We currently have Franklin Bennett on our payroll. Some previous employees would be Bobby Rivers, Eddie Davis, and the Goodwin brothers as meat cutters. As far as the interview process is concerned, if Keegan or Diane was available and the person filling out an application appeared to fit our qualifications, clean cut, intelligent, and possess customer service skills, they would take a few minutes to determine if a secondary interview should be scheduled. The same individuals both black and white applied for jobs on several different occasions and were still not hired, not because they were black or white, male or female, but because they either could not work the hours we had available, had no transportation, did not possess a clean driver's license(when we were looking for a driver), or just was not suited for the position we had available. If we were looking for someone to organize freezers and put loads away, which requires heavy lifting, we would discard females as a rule, or older males, or anyone with a back problem. We did not want to hire someone and train them only to find out they were not suited for the job. We have had some experience with the hiring process. We did not consult Darcy as to who we should hire. On one occasion however, we did hire a friend of Darcy's, Bobby who only worked for a short time because he was incarcerated. She as a rule worked in the pac room in the rear of the building, which has no windows, so I'm not sure how she knows exactly who we spoke to. Unfortunately we do not keep old job applications because they contain social security numbers and are shredded if they are not potential prospects.

For the 6 years I worked at Black Angus Meats, there were no Black employees who worked there or were interviewed. Apparently, after I complained of discrimination, they hired a Black male. When I worked the counter at Black Angus Meats, clean cut, good speaking Black males

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and females would ask for an application, fill it out and give it to the person at the counter. I would give it to Diane Seibert or Keegan Roberts if they were there. They would look outside the window by Diane Seibert's desk where you could see the counter from the back. If the individual was Black, they would tell us to tell them that they were just collecting applications and they'll give them a call. If the person was White, they would tell us to invite the person in and bring them to the office to meet with them. I knew a clean cut well spoken Black male who was looking for employment. There was a sign in the window at the store seeking full-time/part-time employees. He came to the store, filled out an application, gave it to me and I brought it to Diane Seibert. She looked out the window and told me to tell him that they were gathering applications and they would call him. As I was walking behind the counter to return to the applicant in the deli I saw Diane Seibert throw what I thought was the application into her garbage can. Not long after that, I collected the garbage can from Diane Seibert's office and saw the application in the garbage confirming that she threw it out. It was not ripped or shredded to preserve privacy. There was no shredder at the store. The application was thrown away without any consideration. The reason that Black Angus Meats, an employer of 17 employees, does not keep applications of those seeking employment in there is no way to locate the applicants to determine if there has been discrimination. I personally can give the EEOC the names of qualified individuals who applied and were given no consideration because of his/her race.

Raeleen Rush, approximately 23 years old, and her sister, Regina Rush, approximately 22 years old, were employed at Respondent as Wrapper-Packer-Cleaners during approximately 2004 to 2008 and earned approximately \$8.50 per hour. They both are Caucasian and had boyfriends who were Black. Both Caucasian females were harassed about having a Black boyfriend. Sean Round often told Raeleen Rush and/or Regina Rush that, "She would be better off with a white guy"; "She needs to be with one of her own kind" and asked them, "What is wrong with white guys?" They told him it was their choice and to leave them alone. Sean Round also told Raeleen that her boyfriend was using her to get her name because Black men always cheat and he probably has a lot of girlfriends.

Raeleen Rush and Regina Rush were both college students who worked for us for several years. They both had terrific bubbly personalities and the customers loved them. Both dated African Americans and Darcy felt a connection to them because her children were biracial. Sean did make a comment to Raeleen about her boyfriend using her for her good credit score and other things. Raeleen had no trouble telling Sean to mind his own business. Keegan told Sean the conversation was inappropriate for the workplace and he didn't want to hear any more. Our employees were instructed on several occasions as to what was appropriate conversation for the workplace. In Bob's words, "you can talk about the weather and sports, this is no soap opera - leave your personal dramas at home." This was largely instituted because of Darcy. Every day she had another personal tragedy that occurred the night before. For some reason she felt the need to share all the drama in her life. A couple of instances would be her husband beating her older son with a telephone sending him to the emergency room at Degraff Hospital. The next day Darcy announced

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she was going to divorce her husband - as far as we know this has not happened. Another was the discovery of marijuana between the mattress and box spring of her older son's bed, and yet another would be her son selling Darcy's prescription medications near the beer tent at Canal Fest. At least three separate times Bob instructed Darcy to leave her personal problems out of the workplace. He also told Darcy she would have to get used to the idea that her children were black - there was no changing that. School kids are cruel and racial remarks from kids is not unusual. That was his opinion.

The employees were allowed to talk to each other while we worked. I did talk with Debbie Nygrych, as she did with me, about personal matters on occasion. At that time we considered each other as friends. Debbie Nygrych talked with me about the problem of her son drinking and driving. I told her I had taken a troubled teenager into my home who had nowhere to go. He stole my medication and tried to sell it at the Canal Fest. I searched his room and found marijuana between his box spring and the mattress. I grounded him and made him go to drug counseling. On another occasion, my teenage son was acting out and bit my husband in the thigh, who instinctively reacted by hitting him once to get him to stop biting him. When he bit him, my husband had a phone in his hand attempting to make a telephone call.

Respondent states because my children are bi-racial I felt a connection to Raelean Rush and Regina Rush because they both dated African Americans. I felt a connection to Raelean Rush and Regina Rush because they were terrific people and I liked them for themselves, not because they dated African Americans and my children are bi-racial. I do not select who I like based on their race or color.

There was no employee training on discrimination or harassment while I was employed at Black Angus Meats. There was training on how to wrap packages of meat. As admitted, management was aware of the discriminatory comments that were being made by Sean Round and others, but no action was taken. The comments continued as is evidence by the comments that were made to me by Jamie LaPress just prior to my termination.

During my employment, Sean Round would regularly say that he has to deliver to "Bob's Niggs."

During the time that I was employed by Respondent, Jamie Lapres (Caucasian male) and Shawn Round made racial comments to co-workers about Black individuals. They would make statements such as: "How can they have nice cars and get food stamps?" and "How come they have nice clothes and get food stamps?" They would refer to Respondent's Black customers as "Bob's Niggs." Nicole Seibert, the owner's daughter, and Keegan Roberts, manager, would laugh out loud. When a large Black individual with food stamps would come in the store and purchase filet mignon or strip steak, Nicole Seibert would either say the individual was too fat or why can't they get out and work.

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Jamie would often say that the owner, Bob, would call Jamie on the telephone and say his "Niggs" are dirtying up the parking lot. More recently, on May 15, 2010, Jamie needed a key for the paper towel holder by the sink in the deli. He asked me if I could break into it. When I said no, he said, "You have two Black kids so you must know how." I told him my children do not steal, they don't break into stuff and why would he say that. He replied, "cause they're niggers." I was very offended with his comments, so I complained to Debbie Nygrich and Tommy Howell (the butcher), (who are frequently in charge of the staff). Jamie was told that his actions were inappropriate, but he did not take it seriously. He said that I have to "get over it." I could no longer face the hostile work environment, so on May 25, 2010, I was constructively discharged. I tendered a resignation letter to the owner, Robert Seibert. I made him aware that I could no longer bear the harassment from Jamie, and that he had made a racial comment referring to my children as "niggers." The owner accepted my two-week notice and told me "stuff like that happens all the time." When I asked him if it was okay for Jamie to refer to my children as "niggers," he said "it happens in sports and politics", so basically that I had to deal with it.

He called Jamie in and asked him about it. Jamie said that we were not talking now and it was nice. I told Bob that I was very uncomfortable working around Jamie because of his comments. Bob said that he was uncomfortable with the situation so I could leave right now. I collected my belongings and I left crying.

The word "nigger" is not used in the store. At least 60% of our business has to do with inner city customers. They are referred to as such. To refer to them in a negative way would not be beneficial to our business.

I have never heard the term "intercity customer" used at Black Angus Meats during the entire six years I was employed there. Black Angus Meats did not deny that Sean Round would regularly say that he has to deliver to "Bob's Niggs"; that Jamie LaPress (Caucasian male) and Sean Round made racial comments to co-workers about Black individuals such as: "How can they have nice cars and get food stamps?" and "How come they have nice clothes and get food stamps?" and would refer to Black customers as "Bob's Niggs" and that Nicole Seibert, the owner's daughter, and Keegan Roberts, manager, would laugh out loud upon hearing these statements; that when a large Black individual with food stamps would come in the store and purchase filet mignon or strip steak, Nicole Seibert would either say the individual was too fat or why can't they get out and work; or that Jamie LaPress would often say that the owner, Robert Seibert, would call Jamie LaPress on the telephone and say his "Niggs" are dirtying up the parking lot.

Jamie was filling the paper towel dispenser in the deli with Darcy next to him. As he recalls the situation, he was having trouble getting it open and asked Darcy if she could break into it. Jamie denies referring to Darcy's children as niggers. He would joke about her kids not because they were black, but because they were always in trouble. Debbie did

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tell Jamie that Darcy didn't find it funny and he needed to stop. At that point Jamie and Darcy didn't talk much only as it related to their jobs. That was several months before Darcy's resignation letter. We acknowledge that there was lighthearted joking in the store never meant to be h a d l to anyone. Darcy never hesitated to join in. After to talking to the pac room employees it was Darcy who had a grotesque fowl mouth, and all related their individual instances of inappropriate behaviors. Bob or Diane was never made aware of these instances. Bob was known to come down hard on these sort of instances. Everyone knew he would not tolerate such behavior.

It was May 15, 2010, when Jamie LaPress needed a key for the paper towel holder by the sink in the dell and asked me if I could break into it. When I said no, he said, "You have two Black kids so you must know how." I told him my children do not steal, they don't break into stuff and why would he say that? He replied, "cause they're niggers." I was offended with his comments and complained to Debbie Nygrich and Tommy Howell, the butcher, (who are frequently in charge of the staff). In my presence, Debbie Nygrich told Jamie LaPress to apologize, and Jamie LaPress responded by saying, "She'll get over it." After that, Jamie LaPress totally ignored me. When I would ask him to do something job related, like get product out of the freezer for me, he would act as if I did not exist. On Saturday, May 22, 2010, I could no longer face the hostile work environment, so I left a letter of resignation on Diane Seibert's desk at the end of the day giving my two weeks notice. On Tuesday, May 25, 2010, Robert Seibert called me into the office because Nicole Seibert read the letter I left on Diane Seibert's desk. Robert Seibert does not deny that I made him aware that I could no longer bear the harassment from Jamie LaPress, and that he had made a racial comment referring to my children as "niggers." Robert Seibert does not deny that he accepted my two week notice and told me, "stuff like that happens all the time" or when I asked him if it was okay for Jamie LaPress to refer to my children as "niggers" he said, "it happens in sports and politics", so basically that I had to deal with it. He also did not deny that when I told him that I was very uncomfortable working around Jamie LaPress because of his comments, Robert Seibert said to me that he was uncomfortable with the situation so I could leave right now.

I did curse at times, as did everyone else. I am not a joke teller. In addition to racial comments, sexual comments were made by males to me and other females regarding their private areas such as, "She's got a nice ass"; "Your headlights are on"; "Oh look at that cleavage" and "Does the carpet match the drapes?" I was offended by the racial and sexual comments. When racial comments were made, I would tell them that what they were doing was not right. Whenever I complained about things that were illegal or inappropriate (i.e. no hunch break, employee smoking marijuana in the car while delivering fliers) things got worse. I would be ignored. I tried the best I could to get it to stop, but I was fearful of being treated worse than I was and/or losing my job. I was right to be fearful. When my children were specifically referred to in a derogatory way, I had enough. I complained and wanted action taken. Instead, my work load increased because Jamie LaPress would not do his job as it related to me and Robert Seibert told me that I should leave, not Jamie LaPress.

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Darcy was easy to feel sorry for early on in her employment. A single mother with two biracial children, trying to work to provide for her family. Keegan's wife Jill who at the time worked for Windsong Radiology in the billing department, convinced her office to adopt Darcy's family for Christmas 2008. They benefitted from many generous gift-givers. Jill did most of the shopping herself. Keegan and Jill also adopted Darcy's dog at her request, because the dog was sick and she couldn't care for it. Bob and Diane personally loaned Darcy money on two separate occasions to fix her van. No exact repayment schedule was made. Darcy would pay \$20.00 most weeks if she could afford it until the loan was repaid. She was also invited to parties at the Seibert's home, which she attended. When Darcy announced her engagement our employees were happy for her thinking that maybe things would improve for her. Store employees even made the cake for Darcy's bridal shower and of course attended. At least 75% of the employees attended the wedding. We were happy for her.

Why would Robert Seibert and Diane Seibert say that they felt sorry for me as I was a single mother with two "biracial" children trying to work for my family? Whether my children are biracial or not should not matter. [redacted] did have her job sponsor my family for Christmas. Also, they adopted my dog "Coogie". He had been adopted out to another family, but Coogie did not interact well with their other dogs. When he was returned to me, Keegan Roberts asked if Jill could come to my house and meet my dog. Jill came over that night after dinner, played on the floor with Coogie and decided that she wanted him. I was loaned approximately \$200 to fix my van, which I paid back in a month or two. The second time, my brother was driving me to work, and Robert Seibert asked why. I told him I was saving the money to fix my van that was broken down. He offered to loan the money to me which was \$500 or \$600, which I repaid at weekly installments until I received my rapid tax refund and paid the balance in full. Sean Round was loaned money to pay his lawyer. He was also allowed on two different occasions to take the work van home at night because he did not have a vehicle, one time for approximately one month, and another time for a few weeks. I was only at the Seibert's home once for a company pig roast. I paid a store employee \$50.00 to make my bridal shower cake. It was a disaster. He made it at his home using salt instead of sugar and when it was picked up, it was not frosted so it was taken to Muscoreil's Bakery in Tonawanda to be finished. I invited the entire store to my wedding because I did not want to single out specific people by not inviting them.

It is the feeling at Black Angus that the only one with a black and white issue is Darcy. She left her resignation letter on Diane's desk the day after Bob and Diane left for vacation. She didn't want to face those who treated her like family. She had even commented on how she was treated as family. She then proceeded to call Raelean Rush to ask if she would corroborate Darcy's allegations but Raelean refused. Raelean's mother called Diane to let her know. After the resignation letter Darcy was informed she did not need to complete her two-week notice, and was paid her vacation.

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After I was no longer employed at Black Angus Meats, I saw Raelene Rush at a store and told her what happened. She told me that I had to do what I had to do, and if she was called to testify she couldn't lie. In the past, Raelene Rush had to move out of her home because she had a Black boyfriend and he was not allowed to go to her parent's house. When I talked with Robert Seibert about my resignation and told him that I was very uncomfortable working around Jamie LaPress because of his comments, Robert Seibert said to me that he was uncomfortable with the situation so I could leave right now. I was only paid for a 1/2 day that day and not paid for my two week notice period. I was paid the vacation time I had earned, which was one week's pay (40 hours).

I had no choice but to leave my job. My employer was aware of the hostile environment and continual discrimination and harassment and took no action to stop it. I needed my job, but my health was deteriorating due to my work environment I could not take it anymore.

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